

REMARKS

In the Office Action mailed June 25, 2008, the Examiner objected to Claims 11 and 21, rejected Claim 14 under 35 U.S.C. §112(2) for indefiniteness, rejected Claims 12-21 under 35 U.S.C. §101, and rejected Claims 1-21 under 35 U.S.C. §103(a) as being obvious in light of U.S. Patent No. 3,696,808 (hereinafter, “the Roy patent”) and U.S. Patent No. 5,995,868 (hereinafter, “the Dorfmeister patent”). Each objection and rejection is addressed below.

I. Objection to Claims 11 and 21

The Examiner stated, “Claims 11 and 21 are objected to because...In line 2, ‘if’ appears to be typing error and should be amended to --of--.” Claims 11 and 21 are amended in the manner suggested by the Examiner.

II. Rejection of Claim 14 under 35 U.S.C. §112(2) – Indefiniteness

The Examiner stated, “Claim 14 recites the limitation ‘said electrodes’ in line 1. There is insufficient antecedent basis for this limitation in the claim.” Claim 14 is amended to depend from Claim 13 instead of Claim 12, thereby correcting the antecedence issue.

III. Rejection of Claims 12-21 under 35 U.S.C. §101

The Examiner stated, “Claims 12-21 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claim 12 positively claims ‘a subject’. However, the living body is non-statutory subject matter and cannot be positively recited.” Claim 12 is amended such that it no longer provides a subject.

IV. Rejection of Claims 1-21 under 35 U.S.C. §103(a)

The Examiner stated, “Claims 1-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over [the Roy and Dorfmeister patents].”

The Applicants respectfully disagree. However, in order to expedite prosecution while not acquiescing with the Examiner’s arguments, the Applicants amend Claims 1, 4,

5, 12, 15 and 16. Support for amended Claims 1, 4, 5, 12, 15 and 16 is located throughout the application (see, e.g., page 14, line 15 through page 15, line 16). The Applicants retain the right to prosecute Claims 1, 4, 5, 12, 15 and 16, or similar claims, at a future date.

Neither the Roy patent nor the Dorfmeister patents, alone or in combination, teach all of the elements of Claim 1. In particular, neither the Roy patent nor the Dorfmeister patent, alone or in combination, teach a system comprising:

...a processor configured to analyze data collected **at more than one time point**, wherein said data for each time point is collected from said first and said second data sensors, wherein said processor performs a nonlinear mathematical manipulation of said data thereby producing first marginal predictability values and second marginal predictability values for each time point, wherein said processor is configured to determine the difference between said first marginal predictability value and said second marginal predictability value for each time point, **wherein a decreasing difference between said first marginal predictability value and said second marginal predictability value over time is predictive of ictal onset for said subject.**

Neither the Roy patent nor the Dorfmeister patents, alone or in combination, teach all of the elements of Claim 12. In particular, neither the Roy patent nor the Dorfmeister patent, alone or in combination, teach a method for predicting ictal onset in a subject, comprising, for example, a system comprising:

a processor configured to analyze data collected **at more than one time point**, wherein said data for each time point is collected from said first and said second data sensors, wherein said processor performs a nonlinear mathematical manipulation of said data thereby producing first marginal predictability values and second marginal predictability values for each time point, wherein said processor is configured to determine the difference between said first marginal predictability value and said second marginal predictability value for each time point;

obtaining first marginal predictability values and said second marginal predictability values for more than one time point from a subject with said system;

determining the difference between said first marginal predictability value and said second marginal predictability value between said time points, **wherein a decreasing difference between said first marginal predictability value and said second marginal predictability value over time is predictive of ictal onset for said subject.**

The Applicants respectfully request withdrawal of the rejections.

V. Conclusion

All grounds of rejection of the Office Action of June 25, 2008 have been addressed and reconsideration of the application is respectfully requested. Should the Examiner believe that a telephone interview would aid in the prosecution of this application Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

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/Robert A. Goetz/

Robert A. Goetz
Registration No. 55,210
CASIMIR JONES, SC
440 Science Drive, Suite 203
Madison, Wisconsin 53711
608.218.6900